No. 61.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

JOHN SLAKER, ADMINISTRATOR DE BONIS NON, OF THE ESTATE OF JOHN O'CONNOR, DECEASED, APPELLANT,

VS.

CHARLES O'CONNOR, EDWARD O'CONNOR, MARY L. O'CONNOR, ET. AL., APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF OF APPELLEES.

ARGUMENT.

For the purposes of the present inquiry we accept as sufficient the facts of the case stated in the brief of appellant and in the opinion of the Circuit Court of

Appeals (Rec. p. 21, *et seq.*). The jurisdiction of this court over the case well may be questioned, since the validity of no Statute of Nebraska was drawn in question, but we refrain from discussing that subject, believing, as we do, that the judgment of the Circuit Court of Appeals has the support of a line of decisions rendered by this court of unquestionable application and therefore must be affirmed.

The only question before this court (quoting from page 4, appellant's brief) is, "whether the courts of the United States have jurisdiction to determine heirship in an administration proceeding where, by the statutes and constitution of the state, original jurisdiction in such matters is vested exclusively in the county courts."

John O'Connor of Hastings, Nebraska, died in 1913, leaving a large estate of both real and personal property which has been fully administered and awaits final distribution. Appellees claim to be the sole heirs of the decedent and all being non-residents of Nebraska brought this action in the District Court of the United States for the determination of their claim.

We concede the statutes of Nebraska cited in the brief of opposing counsel vest exclusive original jurisdiction over matters of probate in the county courts; that rights of inheritance are exclusively subject to the government within whose jurisdiction the property is situated, and that the Courts of the United States uniformly have refused to assume jurisdiction as courts of probate over the administration of estates.

Thus far we are in accord with our opponents, but we disagree with the conclusion drawn in their brief (page 17), "that the right to inherit in Nebraska is conditioned upon the finding and adjudication of that fact in the county court and especially is this true in the case of a contest as to the heirship."

This conclusion cannot be reconciled with pertinent decisions of this court in the following cases:

Byers v. *McAuley*, 149 U. S. 608.
Sutton v. *English*, 246 U. S. 119.
Farrell v. *O'Brien*, 199 U. S. 89.
Waterman v. *Bank*, 215 U. S. 83.
Ingersol v. *Coram*, 211 U. S. 335.
McClelland v. *Garland*, 217 U. S. 268.

The rule thus is stated in *Byers* v. *McAuley*, *supra*:

> "A citizen of another State may establish a debt against the estate. *Yonley* v. *Lavender*, 21 Wall. 276; *Hess* v. *Reynolds*, 113 U. S. 73. But the debt thus established must take its place and share of the estate as administered by the probate court; and it cannot be enforced by process directly against the property of the decedent. *Yonley* v. *Lavender*, *supra*. In like manner a distributee, citizen of another state, may establish his right to a share in the estate, and enforce such adjudication against the administrator personally, or his sureties, *Payne* v. *Hook*, *supra*, or against any other parties subject to liability; *Barrer* v. *Chapman*, *supra*; or in any other way which does not disturb the possession of the property by the state court."

In *Sutton* v. *English*, *supra*, it is held:

> "That questions relating to the interests of heirs devisees, or legatees, or trustees, affecting such interests which may be determined without interfering with the probate or assuming general

jurisdiction are within the jurisdiction of the Federal Courts where diversity of citizenship exists and the requisite amount is in controversy."

And in *Farrell* v. *O'Brien, supra*:

"It was, however, decided that where the estate of a deceased person is ready for distribution, but no adjudication has been made as to the distributees, the circuit court can entertain jurisdiction in favor of citizens of other states to determine and award their shares in the estate."

The precise point urged by appellant adversely was decided by this court in *Waterman* v. *Bank, supra*:

"The rule stated in many cases in this court affirms the jurisdiction of the federal courts to give relief of the nature stated, notwithstanding the statutes of the state undertake to give the state probate courts exclusive jurisdiction over all matters concerning the settlement of accounts of executors and administrators in the distribution of estates. This rule is subject to certain qualifications, which we may now notice. The courts of the United States, while they may exercise the jurisdiction, and may make decrees binding upon the parties, cannot seize and control the property which is in the possession of the court."

Of *Byers* v. *McAuley, supra*, the opinion in the Waterman case says:

"That case recognized what previous cases had held—that, in proceedings purely of a probate character, there was no jurisdiction in the federal courts. This was in harmony with the rule therefore laid down in *Byers* v. *McAuley, supra*, in which it was held that the federal court could not exercise original jurisdiction to draw to itself the entire settlement of the estate of the decedent and the accounts of administration, or the power to determine all

claims against the estate. But it was there decided that a Circuit Court of the United States could entertain jurisdiction in favor of citizens of other states, to determine and award by decrees binding *in personam* their shares in the estates."

This doctrine was re-asserted in *Ingersol* v. *Coram*, *supra*. We quote from the syllabi:

"The chancery jurisdiction of the federal courts embraces a suit, where the requisite diversity of citizenship exists, to have the complainants adjudicated to be the heirs at law and next of kin of a decedent. A suit within the original jurisdiction of a federal circuit court, to have the complainants adjudicated to be the heirs at law and next of kin of a decedent, cannot be stayed by that court to await the commencement and prosecution to final determination of a suit to be brought in a state court, on behalf of the state, to determine an escheat of the estate."

The text in 21 C. J. 121 has this terse and comprehensive analysis of the subject as defined in the decisions of this court from some of which we have just quoted:

"While federal courts have no original jurisdiction in respect to the general administration of decedents' estates *in rem*, or the probate or contest of wills, except where the local law authorizes an original action to set aside probate of a will, since such matters do not pertain to the general jurisdiction of a court of equity, the equity jurisdiction of the federal courts extends to the administration of estates where the requisite diversity of citizenship and jurisdictional amount exist, and where such jurisdiction may be exercised without interfering with the probate or assuming general administration, in a plenary suit *inter partes*. To this

extent the federal equity jurisdiction is concurrent with the probate jurisdiction of the several states. This jurisdiction cannot be defeated or impaired by state statutes providing exclusive methods for settling estates, or undertaking to give exclusive jurisdiction to the state courts, because state statutes can in no way affect the equity jurisdiction of the federal courts. In the exercise of this jurisdiction the federal court will be governed and controlled by the statutory rules and regulations of the state."

The law is so plain we feel any discussion of ours would be superfluous. Our opponents seem to fall into the error of regarding state statutes regulatory of the forum as an integral part of the substantive right. The right of inheritance is fixed by the law of the state and such right may be required to carry baggage such as an inheritance tax, but no state statute may restrict the forum to the courts of its own state in exclusion or derogation of the equity jurisdiction of the federal courts.

We respectfully submit that the judgment of the Circuit Court of Appeals should be affirmed.

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